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July 18, 2016

Ms. Jean Brochi
Environmental Protection Agency
1 Congress Street, Suite 1100
Boston, MA 02114-2023

Dear Ms. Brochi:

The New York State Department of State (DOS) and the New York State Department of Environmental Conservation (DEC) (NYS Agencies) have jointly reviewed and are providing comments to the U.S. Environmental Protection Agency (EPA) on the draft Eastern Long Island Sound Supplemental Environmental Impact Statement (DSEIS), the draft Site Management and Monitoring Plan, and the proposed rule for the designation of one or more open water Dredged Material Disposal Site(s) in Eastern Long Island Sound, Connecticut and New York.

Proposed Rule

As a state with considerable water dependent uses and navigation infrastructure, New York recognizes the need for, and is fully supportive of, dredging for maintaining these types of activities. However, as we have documented in numerous past communications with EPA and with the U.S. Army Corps of Engineers (Corps), New York's position is clear: we are committed to working with all partners to secure a path forward for achievable, measurable reductions in open water disposal over time. As a demonstration of this commitment, we note that the Department of State (DOS) concurred with EPA's recently (July 8, 2016) published amended Final Rule designating the Central and Western Long Island Sound Disposal Sites (CLDS and WLDS), which includes updated policies and procedures intended to meet this goal, and is subject to the additional restrictions agreed to by all Agencies involved

The proposed rule for eastern LIS contains the same restrictions as those contained within the Final Rule for CLDS and WLDS, with the same ultimate goal of the reduction in open water disposal over time. While the department(s) believe that designation of an eastern LIS disposal site is not necessary, and may impede progress toward the Rule's goals, we do recognize the importance of providing stakeholders with a range of options for management of dredged material in LIS and as such, we would like to suggest the following alternatives be considered in the final proposed action:

1. Designate the proposed New London Disposal Site (NLDS) as a remediation site and develop a capping and closure plan for the existing mounds, and

2. Designate the Niantic Bay Alternative as the eastern LIS long-term disposal site.

We believe that this combination of alternative approaches still allows reasonable options for disposal, while reducing the overall impacts on LIS resources and uses as a result of disposal.

Draft Supplemental Environmental Impact Statement

Given the overall framework which New York advocates, as discussed above with respect to the proposed Rule, the state would like to express its concerns with the Draft Supplemental Environmental Impact Statement (DSEIS) which EPA has drafted. The EPA is proposing to designate one or more disposal sites in the eastern Long Island Sound, based upon information provided by the Long Island Sound Dredged Material Management Program (DMMP) and the DSEIS. New York has provided comments to the Corps and EPA on several versions and on components of both of these documents, and continues to maintain that these studies provide inadequate information to support the need for one or more additional disposal sites in eastern LIS.

Purpose and Need

The primary justification provided by the EPA and Army Corps for an eastern Long Island Sound dredged material disposal site is based on the assertion that there is inadequate capacity at the Western Long Island Sound (WLIS), Central Long Island Sound (CLIS) and Rhode Island Sound (RISDS) sites. Our review of the estimates has yielded a much different conclusion. Based on our analysis of the information in the DMMP, over the next 30 years there is anticipated to be approximately 34.4 million cubic yards (mcy) of fine-grained dredged material suitable for open water disposal, well within the current stated capacity at the Central and Western sites of 40 mcy. This is in addition to the approximately 3 mcy cubic yards of unsuitable material and approximately 15 mcy of coarse-grained material suitable for beach nourishment and other beneficial uses that comprises the remainder of the estimated 52.9 mcy to be dredged in LIS over the next 30 years.

Other Deficiencies

New York's analysis of the DSEIS has also shown that, beyond DMMP-related inadequacies, there are a number of additional concerns, both generic and site-specific, associated with continued reliance on open water disposal. The DSEIS simply does not provide sufficient information as evidence of need or appropriateness of use of ELDS for dredged material disposal, as requested in scoping process comments.

New York previously reviewed the Physical Oceanography Study and Biological Survey report and provided numerous, detailed technical comments to EPA, which appear to have resulted in no changes to the final reports. Other new studies undertaken by or on behalf of EPA for the DSEIS were not shared with the cooperating agencies for comments, prior to publication.

Of particular concern to New York is the continued lack of adequate alternatives analysis and comprehensive biological monitoring and analysis evaluating long-term systemic and cumulative impacts to the health of Sound waters and ecosystems and conveys this information to stakeholders. We have been especially concerned about the lack of information regarding the efficacy of capping plans at the NLDS. These information gaps impact the State's ability to fully assess project need and potential project effects.

We also note that in many places throughout the DSEIS, there are references to on-land dewatering sites and the high cost, lack of available land and potential for groundwater issues of this type of dewatering. These are cited as obstacles to upland beneficial use or upland placement of dredged material. The document is deficient in failing to evaluate the potential of on-barge dewatering. On-barge dewatering has been conducted successfully, with proper controls, in a number of dredging projects, including the large volume of dredged material removed during the Tappan Zee Bridge replacement project. A discussion of on-barge dewatering should be included to describe a mechanism for dealing with dredged material that is destined for upland management, whether it be disposal or beneficial use.

Site-specific concerns

EPA proposes to designate the western portion of the existing (NLDS) plus two additional adjacent areas, NL-Wa and NL-Wb, which are located west of the existing NLDS. EPA also proposes to exclude bedrock and boulder areas, and a shipwreck in NL-Wa and NL-Wb from any disposal activities due to concerns about habitat value and greater environmental sensitivity in those areas. Notwithstanding our above concerns regarding the absence of a need for an eastern LIS site, we agree that the eastern portion of the NLDS should be excluded to lessen the potential impacts on sensitive habitats on Fishers Island. We also agree that the boulder and bedrock areas, and shipwreck in NL-Wa and NL-Wb should be excluded from any disposal activities. However, we note that the DSEIS and the Draft Site Management and Monitoring Plan (SMMP) do not identify any buffers surrounding these areas, nor is there any modeling to show how far a disposal event must be from these areas to minimize any environmental impacts from sediments placed at the site and from suspended sediments during disposal operations. The Department(s) are concerned that these areas could be impacted and request that the DSEIS and SMMP be updated to determine suitable buffer zones for these sensitive sites.

The Cornfield Shoals Disposal Site (CSDS) has been included as an alternative to, or in addition to, the ELDS for designation. The CSDS is a high energy area currently managed as a dispersive site and the Department(s) do not believe that this site is appropriate for use, nor will it meet the needs claimed by EPA.

The Department(s) have identified some concerns with the Niantic Bay Alternative. For example, there is a boulder field that should be mapped and excluded from the area proposed for receiving dredged material. Niantic has been historically impacted by dredged material disposal in the past and selecting this site would better limit impacts to areas previously impacted. Concerns regarding vessel use conflicts are reduced at Niantic since this location is not on top of vessel traffic lanes. Lastly, Niantic is the location farthest from the two most dynamic areas in the vicinity, Plum Gut and The Race.

Site Management and Monitoring Plan (SMMP)

There are key two issues relating to the quality of dredged material that would potentially be disposed of at the ELDS, or an alternative site, that the SMMP should address:

Reference sites.

The selection of the reference and control sites used for comparison of the chemical, bioaccumulation and toxicity characteristics with material from a proposed dredge project is critical. The sites should be chosen to be representative of the sediments currently found in and adjacent to the ELDS (or alternative site). This is important because if a reference site that does not mirror the current conditions at the ELDS is used for this analysis the potential for sediment from dredge projects to degrade the chemical, bioaccumulation and toxicity characteristics of the site is increased.

Compositing Samples.

Compositing of sediment samples of similar grain size and organic carbon content for analysis is a well-established, generally acceptable practice. However, the SMMP for the ELDS (or alternative site) should stipulate an exception to this practice as follows: Sediment samples collected close to potential sources of contamination should not be composited with samples collected at some distance from sources of contamination, even if the sediment characteristics are similar. For example, if a project involves dredging a long channel in a river with an industrial source upriver, the samples collected near the industrial source should not be composited with samples collected near the mouth of the river. In this case, compositing could lead to a determination that all the sediment is suitable, when the sediment near the industrial source may actually be unsuitable for open-water disposal. In addition, since dredging often occurs at the mouth of a harbor or river first, there is potential for the poorest quality sediment from upriver sources to be the most exposed at the disposal site.

Conclusion

In closing, the NYS Agencies would like to thank the EPA for the opportunity to review and comment on the DSEIS and proposed rule, and look forward to engaging with the EPA and others in cooperatively identifying and implementing solutions to the difficult and complex problems of dredged material management in LIS. We are particularly interested in exploring possibilities for joint development of new Water Resources Development Act (WRDA) projects that test out newly developed beneficial use options, since WRDA sets the framework for Army Corps actions and can assist the Corps in working with the states to develop new policies and procedures that ensure the effective implementation of achievable, measurable reductions in open water disposal over time.

We welcome any questions regarding our comments.

Sincerely,

Sandra Allen
Deputy Secretary of State